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February 2, 2010

Via ECF

Honorable Frederic Block
United States District Judge
Eastern District of New York
225 Cadman Plaza
Brooklyn, New York 11201

Re: United States v. Eliyahu Ezagui, No. 09-CR-185

Dear Judge Block:

In Court today, the Government provided us with a list of the witnesses that it would be calling tomorrow. That list consisted of: (1) a loan officer from EverBank; (2) Efrayim Steigman; (3) Schneur Minsky; and (4) Shlomo Hershkop. In addition, as we were leaving Court, we asked Ms. Marrus to inform us of the Government exhibits that pertained to the EverBank witness. Ms. Marrus stated that there only were two condominium units that pertained to the EverBank witness, and that she would advise us of those two units as soon as she returned to her office.

Now at 8:18 p.m., the Government has provided us with an entirely new list of witnesses for tomorrow. That list is: (1) the EverBank loan officer; (2) Menachem Gurewitch; (3) Beryl Junik; (4) Kevin Matheson (the proposed appraisal expert); and (5) Schneur Minsky. In short, the Government added three new witnesses, including its proposed expert, and deleted two others. Finally, the Government in its 8:18 email also for the first time informed us that there are six condominium units, not two, that pertain to the EverBank witness.

There are 39 names on the Government's list of witnesses. There are over 80 binders of documents containing well over 20,000 pages that the Government plans to offer in to evidence. Nearly every day over the past week, the Government has altered its exhibit list whether through additions, subtractions and/or substitutions. We cannot possibly be prepared for tomorrow with these types of tactics by the Government. Such tactics clearly constitute an attempt at trial by ambush, and should not be countenanced by the Court.

HAFETZ & NECHELES

Honorable Frederic Block

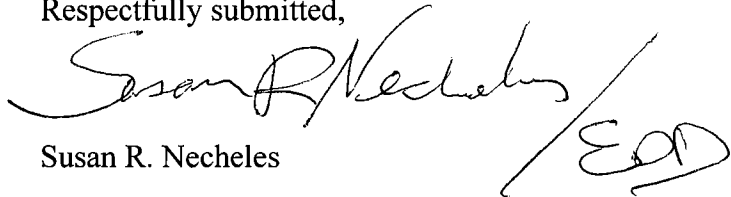
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Your Honor has made clear to the Government on multiple occasions that it should act in good faith regarding its witness lists and should advise us at least one if not two days ahead of time of the forthcoming witnesses. The Government at this point is openly flaunting the Court's orders. Accordingly, we respectfully request that the Court preclude the Government from calling as a witness tomorrow anyone about whom they did not previously inform us.

In addition, the Government should be required to provide an offer of proof with regard to the proposed testimony of Mr. Matheson. The Court precluded the Government from offering evidence of, or arguing that, any condominium unit other than the two named in Counts 11 and 12 of the indictment were inflated. But the Government's expert witness notice with regard to Mr. Matheson states that he will testify about exactly what the Court precluded—that the "property values, as reflected in mortgage applications relating to Count One of the Indictment, were artificially inflated." (Docket Entry No. 94). In light of Mr. Schaeffer's opening statement, it is fair to suspect that the Government will attempt to circumvent the Court's order as to its inflation theory, and do so through the testimony of Mr. Matheson. Accordingly, we respectfully request that Your Honor require the Government to provide an offer of proof with regard to Mr. Matheson's proposed testimony.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Susan R. Necheles", followed by a large, stylized flourish or signature mark.

Susan R. Necheles

cc: AUSA William Schaeffer (via ECF)

cc: AUSA Melissa Marrus (via ECF)